

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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WELLSFARGO BANK, N.A.,

Plaintiff(s),

v.

SFR INVESTMENTS POOL 1, LLC, et al.,

Defendant(s).

Case No. 2:15-CV-753 JCM (CWH)

ORDER

Presently before the court is defendant Sunrise Highlands Community Association's ("Sunrise") motion to dismiss. (Doc. # 16).¹ Plaintiff Wells Fargo Bank, N.A. ("Wells Fargo") filed a response (doc. # 33), and defendant filed a reply. (Doc. # 37).

Wells Fargo's complaint seeks to invalidate Sunrise Highland's homeowners association's foreclosure sale of a property, which purportedly extinguished Wells Fargo's beneficial interest in a \$376,000 mortgage loan. Wells Fargo's complaint alleges, amongst other things, that Nevada Revised Statute 116.3116 *et seq.* is unconstitutional.

A party who files a pleading, written motion, or other paper drawing into question the constitutionality of a state statute must promptly "file a notice of constitutional question stating the question and identifying the paper that raises it, if . . . the parties do not include the state, one of its agencies, or one of its officers or employees in an official capacity" FED. R. CIV. P. 5.1(a)(1)(B).

Wells Fargo has demonstrated its compliance with FRCP 5.1(a)(1)(B). (*See* doc. # 31). However, FRCP 5.1 also requires the court to "certify to the appropriate attorney general that a statute has been questioned" under 28 U.S.C. § 2403. Fed. R. Civ. P. 5.1(b). Section 2403 states

¹ Defendant Alessi and Koenig LLC filed joinders to the motion to dismiss and the reply. (Doc. ## 30, 38).

1 that the court “shall permit the [s]tate to intervene for presentation of evidence, if evidence is
2 otherwise admissible in the case, and for argument on the question of constitutionality.” 28 U.S.C.
3 § 2403(b).

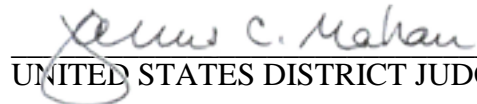
4 In light of the foregoing rule and statute, the court will deny defendant’s motion without
5 prejudice to allow the court to comply and the attorney general to intervene. The parties may renew
6 their motions after the attorney general has been afforded time to respond.

7 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Sunrise
8 Highlands Community Association’s motion to dismiss (doc. # 16) be, and the same hereby is,
9 DENIED without prejudice.

10 IT IS FURTHER ORDERED that this court certifies to the Nevada attorney general that it
11 may rule on the constitutionality of the state statute at issue in this case, NRS 116.3116. The
12 attorney general shall have thirty (30) days within which to intervene on behalf of the state of
13 Nevada for presentation of argument on the question of the constitutionality of the statute.

14 IT IS FURTHER ORDERED that the clerk of court shall send a copy of this order by
15 certified mail to the Nevada attorney general.

16 DATED March 28, 2016.

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18 UNITED STATES DISTRICT JUDGE
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